

Now Europe Needs a Constitution

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I am a constitutional sceptic. I have been turned into one a decade ago, when the European Union embarked on its first ever process of explicit documentary constitutionalization. That process ended up in tatters. The constitutional label was attached everywhere, so that it eventually meant everything and nothing at all. As the constitutional talk flourished, the substance evaporated. Eventually, even the C-word was banned from the EU's founding texts. The EU fell back on a treaty regime.

Scholars have debated more than enough why the EU Constitution finished as it has and the opinions remain divided whether that was an ultimate blow to the Constitution for Europe or just a momentary failure, an impasse, that can or, indeed, shall be overcome in the years to come. I still believe that all the non *a priori* arguments that have been made against the Constitution for Europe continue to be valid now. There are strong legal, socio-political and philosophical reasons that speak against endowing the European Union with a constitution understood in conventional terms. However, they may no longer be strong enough.

The contemporary European Union, 10 years on from the failed Constitutional Treaty, is a very different place. It is an entity that is beset with crises. The economic crisis has been ravaging since 2009, paradoxically from the very year in which the Reform Treaty entered into force, expected to bring calm and tranquillity for the years, even decades to come. The economic crisis, which is far from resolved as I write, has left one member state *de facto* bankrupt, a few of them are in economic purgatory, others have dressed up as economically viable states, while essentially they are walking on an economic tightrope. The situation is one of pervasive economic instability, waiting just for a slight push and the European economic house of cards will be collapsing again.

Economic crisis has, naturally, been translated into a political crisis too. We have witnessed an unprecedented language of the EU's core and periphery. A hegemon was identified and it was together with the unaccountable Brussels and Frankfurt Eurocracy alleged to be imposing unacceptable, and above all democratically illegitimate, demands on the periphery. The market-rationality has been eroding the welfare state. The traditional political parties of the political centre have been, as a result, losing against the radicals of the right and left political spectrum.

The centre no longer holds in Greece, whereby an ultra-leftist populist government is in power, and neither does it in Hungary, where a right populist government of Victor Orbán has been officially creating an "illiberal democracy", departing from the "overly-idealistic rule of law" and choosing to follow the examples of Russia, Turkey and China as a role model polity for the EU of the 21st century.

The liberal project of rule of law in democracy is under attack and in demise in several of the EU member states. The worst situation is in the new member states,

where the liberal project historically has never even gained roots. In countries like Slovenia, there has only been a façade, concealing a genuinely authoritarian face. In crisis, the façade has been cracking and the real face is becoming visible to the world. However, the old member states are not immune to this trend either. There are strong radical right political parties in France, Sweden, The Netherlands and elsewhere, which are waiting for their time to come.

And indeed, their time is coming with the unprecedented humanitarian crisis. A million of immigrants and refugees have already entered the EU, and two more million, according to some reports, are still waiting in Turkey for their journey to the promised German lands. Schengen has collapsed. The member states are both unwilling and unable to secure their external borders. The inter-European solidarity has failed and the solution has been found in erecting fences and walls. Now we will get a proper fortress Europe. The idea came from Orbán and is now, implicitly and explicitly, warmly embraced throughout the European Union.

If we add to this that Spain is facing dis-integration and that the traditionally Eurosceptic Britain is requiring a new EU settlement or it shall exit the Union, it becomes more than apparent that times are bad for the EU. Not just bad: they are unsustainable. It simply cannot go on like this. Every single building brick of the Union: the fundamental values, the political stability, trust, the economic foundations and last, but certainly not least, security, is undermined, under strain or even missing.

This brings me back to the title of this post. Now Europe needs a Constitution. Indeed, constitutions are needed in bad, rather than good times. I contend that the Constitution for Europe in 2005 failed because the times were good. Too good, in fact. The enlargement was a success. Euro was a strong currency. The economic growth was high, in some member states it was sky-rocketing. There was optimism everywhere, among individuals and on stock markets.

Good times are, however, no good for constitution-making. As we know, modern constitutionalism is about discontinuity. It is about rupture with the past. As an onwards looking discourse, modern constitutionalism is about bringing progress, about overcoming the inglorious past and present, which are to be replaced by a better order of things – new polity. There is thus no need to pursue discontinuity with times of prosperity. This was a lesson learned in 2005.

However, the European Union has never been in a poorer shape than today. The parallels with Weimar republic are no longer just an academic fancy, they have become reality. Steps have to be taken and decisions have to be made now, before it is too late, before we will have reached a historically so well-known point of no return. If we have learned something from history, this teaches us that crises and problems, which are comprehensive, so to involve not just one state, but many, can only be solved in common. Constitutional process is about the search for common solutions together. It must be launched now in Europe.

The debate among the member states, their peoples, acting also as citizens of the Union, and the EU institutions, has to begin about what kind of Europe we actually

want for the future. The present Europe does not work. It needs to be fixed. Only partial refurbishment will not do. Giving out concessions first to Greece, now to the UK, then perhaps to Poland or to whomever comes next, is a road to disintegration at the moment where several member states have never been so feeble, indeed helpless, and when a stronger integration is needed more than ever.

We should not be afraid of the immediate consequences of the opening of the constitutional debate. There will certainly be disagreements, deep, even insurmountable, cleavages between the member states. However, they are there already now. They will only become (more) visible, which is good. The EU needs a sincere and open debate on what it is and where it is going. But entertain no doubt: at the end of this new explicit constitutional journey the EU will be very different from what it is now. The alternatives are thus slim. Is it only constitutionalize (and federalize) or perish? Time will tell.

